

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STEVEN FOWLER,)	
)	
Petitioner,)	
)	1:16CV1041
v.)	1:99CR10-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation filed on August 10, 2016, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 295.) In the Recommendation, the Magistrate Judge recommends that Petitioner's "Motion for Relief from Judgment" pursuant to Federal Rules of Civil Procedure, Rule 60(b) (Doc. 293) be construed as an attempt by Petitioner to file a second or successive motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 and that the motion to vacate be dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2555 and 2244 and Fourth Circuit Local Rule 22(d). The Recommendation was served on the parties to this action on August 10, 2016 (Doc.

296). Petitioner timely filed objections (Doc. 297) to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 295) is **ADOPTED. IT IS FURTHER ORDERED** that Petitioner's "Motion for Relief from Judgment" pursuant to Federal Rules of Civil Procedure, Rule 60(b) (Doc. 293) is construed as an attempt by Petitioner to file a second or successive motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 and that the motion to vacate is dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the

Court of Appeals as required by 28 U.S.C. §§ 2555 and 2244 and Fourth Circuit Local Rule 22(d).

A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 3rd day of October, 2016.

William L. Ostrow, Jr.

United States District Judge